

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 338
CASE NO. 79-10
APRIL 9, 1981

Pursuant to notice, public hearings of the District of Columbia Zoning Commission were held on November 10 and 20, and December 1, 1980. At these hearing sessions, the Zoning Commission considered a proposal to rezone a portion of Connecticut Avenue, pursuant to Section 9101 of the Zoning Regulations of the District of Columbia. The hearing was conducted under the provisions of Chapter 5 of the Rules of Practice and Procedure before the Zoning Commission.

The area under consideration for rezoning is the frontage of Connecticut Avenue between Dupont Circle and Florida Avenue, N.E. The subject area includes all of Squares 90, 91, 112, and 113, and parts of Squares 92, 93, and 111. The subject area is presently zoned SP-2 and C-3-C. The Zoning Commission considered whether to rezone the property to a more restrictive commercial district including C-3-B, C-3-A, C-2-C, C-2-B, or C-2-A.

The SP-2 District permits mixed uses of medium/high density development, including residential and limited office-type uses, to a maximum floor area ratio (FAR) of 6.0, with non-residential uses limited to 3.5 FAR, a maximum lot occupancy of eighty percent for residential uses, and a maximum height of ninety feet. The C-3-C District permits major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one hundred percent. The C-3-B District permits major business and employment centers of medium density development, including office, retail, housing, and mixed uses to a maximum height of seventy feet/six stories, a maximum FAR of 5.0 for residential uses and 4.0 for other permitted uses, and a maximum lot occupancy of one hundred percent. The C-3-A District permits major business and employment centers of medium density development, including office, retail, housing, and mixed uses to a maximum height of sixty-five feet, a maximum FAR of 4.0 for

residential uses and 2.5 for other permitted uses, and a maximum lot occupancy of seventy-five percent. The C-2-C District permits community business and employment centers of high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum FAR of 6.0 for residential and 2.0 for other permitted uses, and a maximum lot occupancy of eightypercent. The C-2-B District permits community business and employment centers of medium density development including office, retail, housing, and mixed uses to a maximum height of sixty-five feet, a maximum FAR of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of eighty percent. The C-2-A District permits community business and employment centers of low density development, including office, retail, housing, and mixed uses to a maximum height of fifty feet, a maximum FAR of 2.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of sixty percent.

To the north of the subject area is R-5-C and C-3-C zoning. To the east of the subject area is R-5-B and SP-1 zoning. To the south of the subject area is C-3-C and to the west is R-3,D/R-3, D/R-5-B, and SP-1 zoning. The uses in the neighborhood include a wide variety of mixed uses. The subject area is almost exclusively commercial in use, including office, retail, and service-type uses. These commercial uses also extend to the north and the south of the subject area. The uses to the east and west of the subject area are predominately residential in nature, including rowhouses, flats, and apartments, but also include limited office, service, and institutional-type uses.

The subject area lies within the boundaries of the Dupont Circle Historic District and partly within the Massachusetts Avenue Historic District. The Dupont Circle Historic District is a Category II Landmark " which contributes significantly to the cultural heritage and visual beauty of the District of Columbia." As a designated historic district, the area is subject to the provisions of D.C. Law 2-144, the District of Columbia Historic Landmark and Historic District Protection Act of 1978.

The Zoning Commission conducted public hearings in 1978 for Case No. 76-24(North Dupont - Map Amendment). In the course of deliberating upon the zoning changes proposed in that case, the Commission was unable to reach a decision on how it would rezone the Connecticut Avenue frontage between Dupont Circle and Florida Avenue, N.W. As set forth in Order No. 281, dated May 14, 1980, the Commission stated:

The Commission has also determined that it is not appropriate to take any action concerning the rezoning of Connecticut Avenue from Dupont Circle to Florida Avenue at this time. While the Commission believes that the continuation of the high density and height levels of the present C-3-B zoning is not desirable, the Commission does not believe that any of the existing lower density commercial zones provides adequate commercial density for what is and has been a commercial strip. The Commission has therefore asked the Office of Planning and Development to study what alternatives are possible for future action regarding Connecticut Avenue.

Subsequently, the Commission created a new commercial district in Case No. 79-9 (C-3 District - Text Amendment), which, in addition to other commercial zoning districts, is under consideration for rezoning in this preceeding.

The Zoning Commission derives its authority from the Zoning Act. As set forth in Section 5-413 of the D.C. Code, the Commission is empowered "to regulate the location, height, bulk, number of stories and size of buildings and other structure, the percentage of lot which may be occupied, the sizes of yards, courts and other open spaces, the density of population and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities or other purposes," All of these regulations are "To promote the health, safety, morals, convenience, order, prosperity or general welfare." As further set forth in Section 5-414, the primary responsibility of the Commission is the regulation of land use.

In weighing the varying arguments over how to zone the portion of the Connecticut Avenue strip at issue, the Commission is compelled to consider primarily the land use issues. In this regard, the Commission notes that Connecticut Avenue is a major throughfare in the District of Columbia, and is an extremely wide street at this location. The Commission further notes the presence of a Metro Station entrance at the corner of Connecticut Avenue and Q Street. That entrance greatly enhances the accessibility of the area not only within the District of Columbia but to most parts of the Washington Metropolitan Area.

The Commission notes that the area proposed to be rezoned is immediately adjacent to the Central Employment Area, which is the major commercial concentration in the city and the metropolitan area. The height and density permitted in surrounding zones are medium to medium/high, as set forth in the Zoning Regulations. The height and bulk to be permitted in the subject area must be consistent with the height in the surrounding area. Furthermore, sound planning theory recognizes that it is appropriate to step down in terms of height and density from core areas proceeding outward.

The Commission further notes that the area at present is almost exclusively developed with a wide variety of commercial uses. There are very few residential uses. The existing commercial uses, while they also do serve the neighborhood, serve shopping and business needs for large portions of the city, and also attract a region-wide clientele. The Connecticut Avenue strip in this location is not a mixed use area, but rather is an important business center supplementing the central core of the city.

For all the reason cited above, the Commission believes that it is inappropriate to rezone the subject area to any C-2 District, all of which are designed to encourage mixed use developments with substantial residential components, and all of which are intended to provide for business centers serving smaller and more local needs.

The Commission further believes that retention of the existing C-3-C District would allow for future development at a height and density which might adversely affect the character of the area, and would not be of the appropriate scale and character for the strip. The Commission, therefore, believes that rezoning of the area to C-3-B would best serve the public interest. As set forth in Paragraph 5103.12, the C-3-B District "is intended for uptown locations where the largest component of development will be office, retail and other non-residential uses. C-3-B Districts should be compact in area and located in and near the Central Employment Area, on arterial streets, in uptown centers and at rapid transit stops." The Commission believes that the C-3-B District is thus the most appropriate zone for the area at issue.

The Commission notes that much of the argument in favor of rezoning the area to a lower height and density category is based on historic preservation grounds. The Commission notes that the District of Columbia has one of the strongest historic preservation laws in the country. Pursuant to the requirements of D.C. Law 2-144:

- a. Applications to raze buildings in Historic Districts are referred to the State Historic Preservation Office and then to the Joint Committee on Landmarks (which serves as the local Historic Preservation Review Board) for review and recommendation. If a finding is made that the structure does not contribute to the historic district, the permit to raze may be granted without a public hearing. If the Joint Committee recommends denial of the permit, a public hearing must be held. At hearings, the applicant

must demonstrate that the demolition is either "necessary in the public interest" or that the applicant will suffer "unreasonable economic hardship" if the razing permit is denied. If such showing is not made, the razing permit will not be issued.

- b. Construction of new buildings and alternations of existing buildings are subject to public review and approval by the Joint Committee and the Mayor's Agent which may require specific limitations on height, bulk, design, exterior materials and other building features judged to be necessary in keeping with the historic character of the area and adjacent buildings.

The Commission notes that zoning and the historic preservation law work under separate legislation and procedures. Each process must fulfill its role, but should take into account the existence of the other process and its implications. Zoning establishes land and building use policy, and provides specific standards as to height, bulk, use and other aspects of development. The State Historic Preservation Officer and the Joint Committee have special review powers over razing, and provide beyond zoning, a public review of the scale and design of new buildings in the context of the specific site and the character of the historic district. Neither process should be expected to carry the entire burden of development control. The Commission believes that zoning should not be used to excess in accomplishing historic preservation goals, and the historic preservation process should not be expected to establish and carry out land use objectives for an area.

The Commission believes that the rezoning of the subject area to C-3-B will aid in the historic preservation process. Such rezoning reduces the maximum permitted height from ninety feet to seventy feet, and limits new buildings to six stories. The rezoning reduces the permitted commercial floor area ratio from 6.5 to 4.0, and the overall permitted FAR from 6.5 to 5.0. The Commission notes that by leaving the height and density at the levels permitted by C-3-B zoning, the Commission will aid historic preservation efforts by allowing for certain economic incentives for preservation. National historic preservation and tax laws allow buildings in historic districts to be eligible for tax benefits and in some cases renovation grants. These benefits can take a variety of forms, including development easement, facade easement, and accelerated depreciation of a certified historic renovation. The provisions are intended to provide a financial incentive for owners to preserve historic landmark buildings and buildings within historic districts which

"contribute" to historic character. Reducing the permitted height and bulk levels further lessens some of these economic incentives.

The Office of Planning and Development(OPD) by reports dated 10-31-80 and 2-6-81, recommended rezoning the subject area to C-3-B because this district presented, on balance, the most desired controls over land-use intensity, reuse, infill development and redevelopment. The OPD reported that this district would allow and encourage use of existing buildings and good maintenance, by accommodating most existing buildings within the permitted commercial floor area, height, and lot occupancy. With the permitted commercial FAR of 4.0, the upper floors of approximately ninety-two percent of existing buildings would clearly continue to be conforming in commercial use. This would encourage continued economic vitality in the area and sound building maintenance.

The OPD reported that the permitted height of infill development would be compatible with the pattern of existing building heights, and would allow reasonable flexibility by private architects and the Joint Committee to adjust heights and other design features as necessary. The permitted density would provide an adequate incentive for infill development and perhaps some redevelopment, subject to approval of razings and new construction by the JCL. The OPD reported that the existing development pattern, medium-density office-retail uses, is appropriate to the area. The scale of business activity is substantially higher than that of existing uptown commercial strips and substantially lower than the concentration of office-retail activity located in Downtown commercial areas. The intermediate intensity of commercial use is entirely appropriate to a commercial strip at the edge of Downtown, where surrounding population density is high. Existing commercial intensity in this location serves as a "stepping down" in scale from Downtown to the area on the periphery. The Zoning Commission agrees with the findings set forth by the OPD.

The Advisory Neighborhood Commission - 2B, by letter dated November 10, 1980 and by testimony presented at the public hearing, recommended that the area be rezoned to C-2-A. The ANC cited reasons related to the preservation of the historic buildings along the Avenue, and the maintenance of the fifty foot height that protects the character and scale and secures the present bulk, of the buildings that are now compatible with the adjacent community. The ANC-2B believed that rezoning to C-2-A would generate more neighborhood commercial uses, would reduce existing traffic levels and would force major office development to locate downtown where existing transportation

system could support that development.

The Zoning Commission is required by statute to give "great weight" to the issues and concerns of Advisory Neighborhood Commissions. In regard to the issues and concerns raised by the ANC, the Commission stated the following:

- a. As to the concerns of ANC-2B, regarding historic preservation issues, the Commission believes that zoning is not and cannot be the mechanism to resolve all problems. The Commission notes the historic preservation process identified earlier in this order, and believes that the historic preservation process is strong enough to maintain the character, scale, and bulk of existing buildings that are compatible with the adjacent community. The Commission further believes that reducing the C-3-C zoning on the subject area would reinforce the historic preservation objectives.
- b. As to the concerns of the ANC-2B regarding its desire for more neighborhood commercial uses along Connecticut Avenue, the Commission believes that the subject stretch of Connecticut Avenue is a major regional commercial attraction. The Commission also believes that rezoning the area to C-2-A will have little impact on whether the area will be used for neighborhood commercial uses. The existing buildings are likely to remain, and are likely to continue to be attractive to the kinds of uses already existing in the area.
- c. As to the concerns of the ANC-2B regarding its desire to reduce automobile traffic, the Commission believes that reducing building height and density limits will not effectively change automobile traffic patterns. The Commission believes that even if no change in zoning were adopted, the historic preservation mechanism will insure that there will be no large scale redevelopment of this area. Consequently, development is likely to remain at substantially the same levels as the present, and rezoning will not alter traffic levels. The same reasoning applied to forcing office development downtown. There has been no large scale change in the area since a 90 foot height and 6.5 FAR were permitted in 1958, and the historic preservation process makes the likelihood of substantial new development remote.

The referral to the National Capital Planning Commission required by the Home Rule Act is for "comment and review." The Act is silent about the obligations of the Zoning Commission as to the report made by NCPC to the Zoning Commission. This contrasts sharply with other provisions of the Home Rule Act. In Section 203, regarding the comprehensive plan, the Act provides that if the NCPC finds that an element of the comprehensive plan will have a negative impact on the interests or functions of the Federal Establishment, the element "shall not be implemented." The Zoning Commission therefore believes that it is not bound to accept the report of the NCPC if it finds valid reasons not to be so bound. The Zoning Commission does believe that it must give serious attention and consideration to the report of the NCPC, and the issues and concerns raised therein.

The NCPC report reaches two conclusions

1. The proposed rezoning from C-3-C and SP-2 to C-3-B is inconsistent with the Comprehensive Plan.
2. The proposed rezoning from C-3-C and SP-2 to C-3-B would have an adverse impact on the Federal Interest in the preservation and protection of the historic district.

In regard to the Comprehensive Plan, the Zoning Act as amended by the Home Rule Act (D.C. Code, Section 5-414, 1973 Ed., Supp. V, 1978) requires that "Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the National Capital..." The District of Columbia Court of Appeals, in the case of Citizens Association of Georgetown v. Zoning Commission, D.C. App., 392 A.2d 1027 (1978) held that the Comprehensive Plan referred to is the plan to be adopted pursuant to Section 203 (a)(4)(D) of the Home Rule Act. The Court further held that until that plan was adopted, compliance with the comprehensive plan provision of the statute requires solely that the Zoning Commission "zone on a uniform and comprehensive basis."

At this point, only a limited number of elements of the Home Rule Act comprehensive plan have been adopted. The NCPC has adopted a Foreign Missions and International Agencies element and a Federal Environment element. The District of Columbia Council has adopted, and the NCPC has approved, a Goals and Policies element. The latter is the only local element of the Plan to be adopted, and is the element at issue in this case.

This proposed map amendment was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self Government and Governmental Reorganization Act. The NCPC reported that the proposed rezoning is inconsistent with the Comprehensive Plan and would have an adverse impact on the Federal interest in the preservation and protection of the historic district. The Planning Commission reported that:

1. The National Capital Planning Act of 1952, as amended, charges the Planning Commission with the preservation of "important natural and historical features" of the National Capital. The area proposed to be rezoned is within the Dupont Circle Historic District, a Category II Landmark of the National Capital on the National Register of Historic Places. Therefore, the preservation and protection of the Dupont Circle Historic District is a Federal interest.
2. The Comprehensive Plan for the National Capital has among its goals increased "awareness of, and access to, facilities, places and activities essential to residents' and visitors' understanding of their history and culture" and among its policies "the preservation and enhancement of places and events which most importantly contribute to neighborhood identity" and "the continued identification, preservation and use of significant***historic***districts and sites."
3. The proposed rezoning would permit buildings of 70 feet in height with a maximum floor area ratio of 5.0. Buildings of such bulk and height would have an adverse impact on this portion of the Dupont Circle Historic District, where approximately 90 percent of existing buildings are 55 feet in height or below.
4. The proposed rezoning would not eliminate the potential incentive for demolition of existing structures, almost all of which contribute to the character of the historic district.

The NCPC further recommended that the area should be rezoned to a new zoning district more compatible with this portion of the historic district that would more closely reflect the existing character and pattern of development.

The NCPC cites two sections of the District of Columbia Comprehensive Plan Goals and Policies Act of 1978. Sections 451 and 452 are both from the portion of the element dealing with "History and Culture." The NCPC made no reference to any other portion of the Goals and Policies element, even though the element has sixty-four other sections dealing with such topics as land use, transportation, economic performance and urban design.

In addressing the concerns of the NCPC regarding the Comprehensive Plan, the Zoning Commission states the following:

1. The issue of historic preservation has been the primary motivation for the consideration of rezoning of the subject area. The Commission has previously set forth in this order, its view on the relationship between zoning and the historic preservation protection processes established by D.C. Law 2-144. The primary mechanisms for historic preservation in the District is D.C. Law 2-144. The NCPC's finding that "the proposed rezoning would permit buildings [which]... would have an adverse impact on this portion of the Dupont Circle Historic District" ignores the reality of D.C. Law 2-144. Section 8(f) of that Law allows the Mayor's agent to deny the issuance of a building permit for new construction in a historic district "if the design of the building and the character of the historic district or historic landmark are incompatible." Further, Section 5(e) provides that no demolition permit for a building in a historic district may be issued "unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in reasonable economic hardship to the owner." The Zoning Commission notes that the Joint Committee on Landmarks has recently approved two buildings in the subject area, one at a height of seventy-four feet and one at a height of approximately seventy-eight feet. Under the terms of D.C. Law 2-144, the designs of both were considered to be compatible with the character of the historic district. If D.C. Law 2-144 is properly administered, there can be no contravention of the intent of the Comprehensive Plan. The Zoning Commission has previously stated in this order its belief that the historic preservation process

is strong enough to accomplish its purpose. The Commission would be unwise and presumptive to rezone property on the implication that another government entity is incapable of carrying out its statutory mandate.

2. The Zoning Commission has already stated in this order its belief that rezoning from C-3-C and SP-2 to C-3-B will be consistent with historic preservation goals and policies. This rezoning will reduce the permitted height by twenty feet, and commercial floor area ratio by 2.5. It will still provide for some measure of economic incentive to encourage preservation.
3. The NCPC further failed to recognize that in evaluating and applying the Goals and Policies element, all of the goals and policies must be considered. The element as a whole constitutes the goals and policies for the District of Columbia . To seize upon one goal or policy to the exclusion of all the others is to the detriment of the city. The NCPC did not cite such other policies of the element as "to encourage the retention of existing businesses, the attraction of new businesses and appropriate business expansion" (Section 502(a)), "to promote a broadened public revenue base for the District, using all available resources" (Section 542(c)), "to promote appropriate commercial, industrial and related development to serve the economic needs of the city and its neighborhood" (Section 702(b)), "to promote land uses which most effectively support efficient transportation systems" (Section 702(g)) and "to promote the maximum possible use of public transit for trips within the city " (Section 802(a)). The Commission believes that, in determining whether an action is inconsistent or not inconsistent with the Comprehensive Plan, it must take into account the entire Goals and Policies element. Further, the Commission must balance what are often competing goals and policies. The Commission believes that to accept the view of the NCPC and to reject the rezoning would be to take an action that is more inconsistent with the Plan than the action to be taken herein. The Commission believes that the balance to be reached clearly favors the proposed action.

In suggesting an adverse impact on the Federal Interest, the NCPC has again singled out a small portion of what might be considered to be the Federal Interest. The District of Columbia is the national capital. From that viewpoint, any action taken by the Zoning Commission which affects the District of Columbia might be said to affect the Federal Interest. However, in establishing the principle of home rule, and the dichotomy of authority between the District and Federal governments, the Congress clearly intended that the interests of the District would prevail over other interests in some circumstances. The power of the District is not unchecked. For example, the Congress retains disapproval power over all legislative actions of the City Council.

The Commission believes therefore that, in assessing whether a proposed action would have an adverse impact on the Federal interest, it must consider all the ramifications of such actions and strike the appropriate balance of Federal and local concerns. The Zoning Commission believes that the issue of historic preservation is primarily a local issue. The preservation of historic districts is accomplished through local legislation and controls. The goals and policies for historic preservation cited by the NCPC are from a District element of the Comprehensive Plan. The Commission believes that the mere fact that a historic district is listed on the National Register of Historic Places is not sufficient to accept the assertion that protection of that district is a Federal interest. The Commission notes however that even if the NCPC's argument is correct, its conclusion that there will be an adverse impact on that interest is not correct. The Commission has stated its findings and conclusions on the question of historic preservation previously in this order. It is not necessary to state them again.

In response to the NCPC's recommendation that the area be rezoned to a new zoning district that would be compatible with the area, the Zoning Commission notes that such a proposal is not before the Commission at this time. Without having the substantive nature of such a district before it, the Commission is unable to determine whether it would be appropriate to adopt such a district. The Commission has invested a considerable amount of time and study in considering the proper zoning for the area at issue. Based on all of the information now available, and considering all of the possible alternatives, the Commission arrives at the conclusion that rezoning to C-3-B is the proper course.

The Commission finds that the proposed amendment is in the best interests of the District of Columbia and is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act. The Commission, therefore hereby orders that the following property be rezoned from C-3-C and SP-2 to C-3-B:

All of Squares:

90, 91, 112, and 113

Part of Squares:

92 - that portion thereof presently zoned C-3-C, including lots 47-53, 25,30,36,37,57,58, part of 31 (62), part of 31 and 32 (63), 33 and 807 and 808 (61), part of 38 and part of 39 (59), part of 38 and part of 39 (60), and 806.

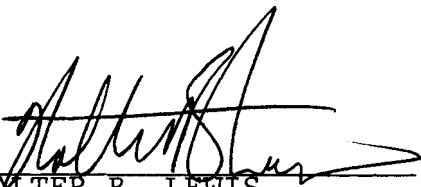
93 - that portion thereof presently zoned C-3-C, including lots 65, 75,76,69 (821), 70 and 144 (146), 812-814 (820), 800,801, and 139-141.


111 - that portion thereof presently zoned C-3-C, including lots 13, 14,18-20,77,78,40,59,60-62 (82), 803 and 804 (818), 800, 801, and 814-816.

(802)- Parentheses identify the current lot or portion of a lot designation, as per records of the D.C. Department of Finance and Revenue.

The source of all lots and squares is the Baist Real Estate Atlas.

Vote of the Commission taken at the meeting on February 12, 1981: 3-1(Ruby B. McZier, George M. White, and Walter B. Lewis, to approve C-3-B - John G. Parsons, opposed and Theodore F. Mariani not voting having recused himself).


WALTER B. LEWIS
Chairman
Zoning Commission


STEVEN E. SHER
Executive Director
Zoning Secretariat

This order was adopted by the Zoning Commission at its public meeting held on April 9, 1981 by a vote of 3-1 (Ruby B. McZier, George M. White and Walter B. Lewis to adopt, John G. Parsons opposed, Lindsley Williams not voting, not having participated in the case).

In accordance with Section 4.5 of the Rules of Practice and Procedure before the Zoning Commission of the District of Columbia, the amendments to the Zoning Map are effective on 1 MAY 1981.